

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

WALTER DUANE WHITE,

Petitioner,

v.

**Civil Action No. 3:07CV8
(Judge Bailey)**

WARDEN JOYCE FRANCIS,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation [Doc. No. 37] of Magistrate Judge John S. Kaull, dated October 31, 2007, and the petitioner's Objections [Doc. No. 39] thereto filed on November 7, 2007. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made.

In his Objections, petitioner recites the basis on which the Report and Recommendation ("R & R") is judged, however, the petitioner does not enumerate any specific objections to the R & R. This Court finds that the R & R properly interprets Fed. R. Civ. P. 7(a): "[t]here shall be a complaint and an answer . . . [n]o other pleading shall be allowed, except that the court may order a reply to an answer." Here, the petitioner is not entitled to default judgment because the defendants have not failed to answer or otherwise defend for failing to respond to the petitioners reply, as such response is "expressly prohibited." R & R at 2. Therefore, after reviewing the above, is of the opinion of this Court that the Magistrate Judge's Report and Recommendation should be and hereby is **ORDERED ADOPTED.**


For the foregoing reasons and for the reasons stated in Magistrate Judge Kaull's Report and Recommendation, the Court **ORDERS** that:

1. the petitioner's Motion for Default Judgment [Doc. No. 36] be **DENIED**;
2. the Report and Recommendation is hereby **ORDERED ADOPTED**.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record.

DATED: March 14, 2008.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE